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ABSTRACT

A study was made to present the opinions of educational music publishers regarding music educators making single copies of individual parts of purchased arrangements. Some 50 educational music publishers together with 50 band directors and 50 choral directors were surveyed by questionnaire. Based on the data collected, the analyses made, and the findings reported, the following conclusions were drawn: (1) the law is quite clear, there is no reason for any music educator to make any unauthorized copies of any parts of any music; (2) the results confirm that music educators do make unauthorized copies, and that music publishers are aware of this practice, but to date have taken no legal recourse toward remedying this situation; (3) variations in the standard instrumentations used by music publishers are sufficient to dilute the value of ordering standard instrumentation; and (4) music publishers and educators are in basic disagreement in their opinions concerning the seriousness of making copies of parts. The study recommends that: (1) music educators cease making unauthorized copies of music; and (2) publishers should provide a clear definition of what parts are included with a publisher's arrangements when they are advertised. Further recommendations are included. (WCM)

A STUDY COMPARING THE OPINIONS OF MUSIC PUBLISHERS AND MUSIC EDUCATORS CONCERNING COPYING OF EXTRA PARTS

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CHAPTER I

THE PROBLEM AND DESIGN OF THE STUDY

Many music educators have for years used photocopiers, thermofax machines, and other forms of duplicating devices rather casually to make visual copies of music parts. The method used has usually appeared to be a quick and economical means of providing extra parts not included in an arrangement which has either been on file at, or recently purchased by, a given school district.

Most of these music educators know that they may be (are) violating the copyright law, but they know little about that law. Even fewer of these educators have any idea of the attitudes and opinions of music publishers and composers relative to this apparently casual attitude of the music educators who copy the music. In fact, many educators take it for granted that they are doing little if any substantial disservice to the publishers by making copies of musical parts already purchased. This appears to be particularly true in view of the fact that virtually all instrumental arrangements include many parts which are unusable by a particular school group.

THE PROBLEM

Statement of the problem. It was the purpose of this study to present the opinions Of educational music publishers regarding music educators making single copies

of individual parts of purchased arrangements.

Importance of the study. Music educators have too long been unaware of music publishers' opinions about the educators' copying of parts of music. In view of the United States Copyright Law, which is designed to protect composers' and publishers' rights, music educators should be aware of publishers' opinions with regard to their legal rights in this matter. The question is not only legal, but ethical and moral as well, as the educators who engage in copying may be (are) denying the composers and publishers a part of their livelihood.

METHODS OF PROCEDURE AND SOURCES OF DATA

The purposes of this section of the study were to describe: (1) the methods used in obtaining the samples; (2) the design of the opinionnaires; and (3) the statistical treatment of the data.

Sample selection. A total of 50 publishers of music were selected. These 50 were defined as being "educational music publishers." Twenty-five of these were selected by the employee of a central Indiana retail music store as being "most used" sources of educational music. The second 25 publishers were selected by one of the researchers, who based the selection upon his background in both instrumental and vocal music. The criteria used in this selection process was: (1) familiarity to the educator; (2) state in which the publishing house was

located; and (3) lack of affiliation with other publishers in the sample.

A single page opinionnaire, typed on both sides, was developed and mailed to each of the members of the sample. A follow-up inquiry was mailed to non-respondents approximately one month later.

Comparison sample. For comparison of opinions a random sample of 50 band directors and 50 choral directors from Indiana high schools was made. Each of these samples was mailed an opinionnaire. These opinionnaires differed from that mailed to the publishers only in the wording of selected items. The wording was changed for clarity and in no way was intended to change the substance of the question.

Design of the opinionnaires. The opinionnaire was designed in a basic closed form, that is, the questions were multiple choice. Four definitions of terms preceded the items to aid the respondent in interpretation of the question. Thirteen items were included on the publishers' instrument, while 16 items were included on the music educators' questionnaire. Additional comments were encouraged and received. A one page cover letter was included explaining the purpose of the study and the procedures being followed by the researchers,

The purpose of the questions contained in the instruments was to elicit the following information:

(1)the type of educational music in which the respondent had the greatest volume (use), (2) whether the company (educator) used standard instrumentations, (3) means preferred to procure extra parts (both publishers and educators), (4) opinions (facts) concerning profits from sale of extra parts, (5) awareness of any legal action against any music educator for copying (making single) parts, and (6) opinions of publishers and educators concerning educators' making hand copies and photocopies of single parts of purchased music. Copies of the instruments together with the initial and follow-up letters will be found in Appendix A.

Treatment of the data. All data were tabulated and reported as a per cent of responses received. Data were presented in tabular form where applicable. Comments contained in responses were reproduced in the appendixes, analyzed, summarized, and utilized in the analysis where applicable. Several publishers responded with letters and detailed comments. These were reproduced in the appendix after publication release had been secured from the author.

LIMITATIONS OF THE STUDY

The limitations of any investigation conducted by the use of normative survey techniques existed in this study. A further limitation is the educational and experiential background of the researchers. They have no

formal legal training, but rather possess varying degrees of expertise in the fields of education and music. Care has been taken to summarize and recommend from the responses to the instruments and the correspondence received from the respondents. Specific legal interpretation of laws and court decisions has been avoided. The review of literature is intended only to familiarize the reader with selected concepts and is not intended as a legal or quasi-legal presentation.

This is a study of opinions and its use is intended within those constraints. It is hoped that this study will make a contribution toward better understanding of the problems encountered by composers, publishers, and music educators.

DEFINITIONS OF TERMS USED

Terms used in this study were defined as follows:

Arrangement: a set of parts which, taken collectively, form an original musical work.

Author: see creator.

Authorized use: use with the consent of the copyright owner.

Composer: see creator.

Concert size music: Instrumental music of a size suitable for concert use, including octavo size as the smallest.

Creator: the maker or owner of a work.

Extra parts: parts in excess of those included in a publisher's arrangement.

Fair use: use which is judicially accepted as being in the public interest and not requiring the consent of the copyright owner.

Limited copies: copies issued to a well defined group or number of persons.

March size music: any music of a size which will fit into a marching band folio.

Mechanical rights: rights regarding sound reproductions of copyrighted works.

Music educator: any person teaching music in a public or private school where no personal profit is realized from the duplication of music (exclusive of salary earned for professional services rendered).

Parts: music for individual instruments or voices which, taken collectively, form an arrangement.

Photocopies: individually produced, visual copies.

Public domain: property rights that belong to the community at large, unprotected by copyright or patent, and subject to appropriation by anyone.

Reproductions: see photocopies.

Unauthorized use: use without consent of the copyright owner, which is not legally or judicially acceptable.

Work: something produced by the exercise of creative

talent or expenditure of creative effort; a musical composition or arrangement.

All other terms used, where not specifically defined, have been taken from Webster's Seventh New Collegiate Dictionary.

ORGANIZATION OF THE REMAINDER OF THE STUDY

This study has in Chapter II a brief review of pertinent literature and related research. The presentation and analysis of data are reported in Chapter III. The summary, findings, and conclusions are reported in Chapter IV. In addition, appropriate supporting documentation and complete transcripts of comments are presented in the appendix.

CHAPTER II

REVIEW OF LITERATURE

INTRODUCTION

The idea of copyright began when Roman publishers paid authors for the right to duplicate and/or sell their works. The first formal copyright was granted to the Stationer's Company of England in 1556. That company's charter allowed it to print anything approved by the king. This gave the king the power to censor any material printed by the only legally approved printer.

By the end of the 17th century a law was in effect known as the "Statute of Anne." This law gave a 14 year copyright to the author, with the right of renewal for an additional 14 years. The right of the Stationer's Company as the sole approved printer was retained. Judicial expansion of this law eventually gave sole property rights to the author of a work.

American colonists brought with them the idea of copyright, and by the time of the Constitutional Convention all but one state had a copyright law. (Bernstein) Drafters of the Constitution felt a need for a national copyright law. Article one, section eight of the United States Constitution gives the Congress of the United States the power to grant to authors "exclusive rights" for "limited times" to "promote the progress of useful acts." (United States Constitution)

The first known copyright granted in this country was a five year right granted to Andrew Law by the Connecticut Legislature in 1781. He had invented a system of musical notation. The Legislature granted him copyright for the sum of 500 pounds. In 1783 the Connecticut Legislature enacted the first copyright law in the United States. (Hattery:24)

President Washington signed the first national copyright law on May 31, 1790. This law, resembling the Statute of Anne, was continually modified through the 19th century. Only the owner's rights to books, maps, and charts were protected under these laws.

This country presently functions under the Copyright Act of March 4, 1909. This act was requested by President Taft to consolidate laws scattered through 12 separate statutes. This act covers writings, books, periodicals, lectures, dramatic and musical compositions, maps, works of art, scientific drawings, photographs, and motion pictures. (Bernstein)

An International Conference on Copyright was held in Geneva, Switzerland, in 1952. The purpose of this conference was to establish standards for reciprocity in copyright protection of citizens of the participating nations. The result of this conference was the Universal Copyright Convention, which became effective in 1955. (Bogsch:5) Under this convention all citizens of contracting

countries, as well as aliens who make first publication of a work in a contracting country, are protected in all contracting countries for a minimum of 25 years. (Bogsch:44)

UNITED STATES COPYRIGHT LAW

The present federal copyright law, enacted in 1909, was intended to stimulate the creativity of authors, using a profit incentive. Under this law a work may be protected for a period of 28 years from the date of registartion, with the provision of an additional 28 year renewal period. Under this law a work is protected from printing, reprinting, copying, selling, making of arrangements and performance for ptofit, without the copyright owner's consent.

Musical works are registrable under Class E of the copyright classifications and may be registered either before or at the time of publication. (United States Copyright Office 1969a) A published work is one which has been made available to the public in some way; usually by the sale or public distribution of copies. (Bogsch:6) The date of publication is the earliest date when copies of the first authorized edition are placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority. (Bogsch:6-7) To be published, music must be duplicated in visual copies offered for sale or general distribution. (Siebert:55)

A work loses copyright protection if published or distributed to the general public without registration with the United States Copyright Office. (Bork, 1971d:63-64) Such a distribution or publication would constitute dedication of the work to the public domain. (Bogsch:7) While some works may be dedicated to the public by public presentation, this is not true of performances of music by the composer, even when the work is not registered for copyright. The rationale for this is that composers develop their works as they perform. (Berk, 1971d:63)

The law does not protect all of the ideas of a composer, only those ideas expressed in a specific manner. (Berk, 1972:5) To protect the use of that specific expression the copyright notice must be affixed in the prescribed manner. A user is safe from copyright infringement suits when the copyright notice is not properly affixed. The user only becomes liable when he has been properly notified of copyright protection. (United States Copyright Office, 1969a)

Everyone has the right to use a work for the purpose for which it was created. (Hattery:84) For example, notes for private use are outside the scope of copyright restriction. (Hattery:95) However, the law provides that ". . . any person who willfully and/or for profit shall infringe any copyrights . . . shall be guilty of a misdemeanor." The law provides for a sentence of up to

one year in prison and a fine of between $100 and $1,000. (Hattery:114-115)

Like new works, new arrangements of public domain works and arrangements which are approved by the copyright owner may be registered for copyright. (United States Copyright Office, 1969a)

> To constitute a musical composition for purposes of copyright registration in Class E, a work must generally contain notations representing a succession of musical sounds, usually in some definite melodic and rhythmic pattern. The work may consist of music alone, or of words and music combined. A work consisting of words alone is not registrable in Class E. The presence of melody, rhythm and harmony or any one or two of these elements may be considered to constitute a musical composition. (United States Copyright Office, 1970:ch 2.6.1)

A proper copyright notice should appear as follows:

It should include the word "copyright" or the symbol (c), the name of the copyright owner or owners and the year of publication, which is the year in which copies are first placed on sale or publicly distributed by the copyright owner. If unpublished when registered, the notice should contain the year date of registration for the unpublished version. In the case of material being added to the published version, the year dates of both published and unpublished versions should appear. The notice for musical works should appear on the title page or the first page of music. (Bogsch:8-9)

COMMON LAW COPYRIGHT

Common Law Copyright is provided under state laws and varies from state to state. However, this is a general summation of the several laws.

Under these laws an unpublished work is protected from the date of its creation. (Hattery:24) Some authors and composers may use these laws to extend the length of their protection, since common law copyright has no statute of limitations. United States copyright is limited to a maximum of 56 years from the time of initial registration. (Hattery:84) Common Law Copyright is lost at the time a work is registered with the United States Copyright Office, and all published works must be registered for United States Copyright to maintain protection. (Hattery:26)

Another advantage of Common Law Copyright is that there is no allowance for fair use. This law gives the owner absolute control over his work. (Hattery:84)

The securing of Common Law Copyright is quite simple. There is no registration or formal procedure; one only must be able to establish that he is the creator of his work, and only when the legal question arises.

Some problems of Common Law Copyright are: (1) it is often difficult to prove creatorship, (2) if copies are issued without proper notice or on an unrestricted basis the composer loses all right to his work, and (3) no specific damages for violations are collectable. (Siebert:25-26)

A composer issuing limited copies of his work should affix the notice "All Rights Reserved" in a conspicuous place on the title page.

MORAL RIGHTS

Moral rights (a term derived from European laws) are three in number and tend to protect the association of the composer's name and/or distortion of his works. These rights are not protected as such in the United States, but they are protected under legal concepts such as defamation, unfair competition, right of privacy, and breach of contract. (Siebert:37-39) We refer more commonly in the United States to the "credit line" area. These rights are granted on a state to state basis due to a lack of federal definition, and are subject to individual variations between and among the several states.

CLASSES OF USE OF COPYRIGHTED MATERIALS

There are, for all practical purposes, three classes of use of copyrighted material. These are: (1) unauthorized, (2) authorized, and (3) fair use.

Unauthorized use exists when the composer's permission has not been granted and the use may be in conflict with the composer's rights as the copyright owner.

Authorized use exists when the composer's permission has been granted. This may entail payment of a royalty.

Fair use is a judicially created concept under

which any person may use copyrighted material if he has a valid need for the use, and his use would not infringe upon the rights of the copyright holder. Therefore, the user need not have the owner's permission for the use. The concept is usually applied in the public interest to break the complete monopoly of the copyright owner.(Burk: 1971b)

The major problem with fair use is that there are few cases where there is a distinct difference between fair use and unauthorized use. (Burk:1971b, 55-57) Illustrative criteria which courts have used to determine fair use are: (1) the purpose of the use (e.g., illustrating comments used in a summation or review; some excerpts used in a book of quotations may not be fair use. Lengthy quotes in scholarly works may be justified, though short quotes in a commercial work would not be.), (2) the nature of the copyrighted work (e.g., a reproduction of text matter taken from a technical treatise is easier to justify than reproductions of musical scores or pictorial art), (3) the amount and substantiality of the material used in relation to the copyrighted work as a whole, and (4) the effect of the use on the owner's potential market for his work (e.g., a single copy for private use may not affect the owner's potential market, but a quotation of a significant part of his work, in a widely circulated publication, might satisfy potential demand). (Siebert:51)

Siebert, continuing his discussion, states that

"... legal precedent for determining what is fair use of music is sparse." (57) Further, there is "... no case of fair use related to a portion of a copyrighted work." (Siebert:81) Cases cited by various writers on copyright deal with unfair use of entire works, not portions of a work. In any case, a statement by the President of the Music Publishers Association makes it clear that the MPA considers the copying of individual parts ("extra parts") as unfair use. (Music Publishers Association:23)

THE GENTLEMEN'S AGREEMENT OF 1935

The Gentlemen's Agreement was an attempt to establish fair use for single reproductions of copyrighted works by a library, when the reproduction is intended for private use as a normal part of research, but not involving publication. (Hattery:159)

The Agreement was the result of the work of the Joint Committee on Materials and Research. It was organized as a result of the efforts of the American Council of Learned Societies and the Social Science Research Council, in agreement with the National Association of Book Publishers. Major credit for the agreement belongs to Dr. Robert Binkley of Western Reserve University, who carried on extensive correspondence with publishers promoting the idea of fair use. (Hattery:157)

This agreement was never intended to be a contract, but rather a practical statement related to fair use as

applied to library copies for scholars. Publishers as a body have never repudiated this agreement. (Hattery:163)

Under The Agreement, a library, archives office, museum, or similar institution may make individual copies for scholars upon written request, if the copy is requested for the purpose of research. Notice must be given to the scholar that he may violate the copyright law by misuse of the copy, and that the copy must be furnished without profit. (Hattery:157)

PERFORMANCE RIGHTS

Two major organizations exist in the United States for the purpose of licensing performances of copyrighted works for clients. These are Broadcast Music Incorporated (BMI), and the American Society of Composers, Authors and Publishers (ASCAP). A third organization, The American Guild of Authors and Composers, contracts all commercial rights for its clients.

Copyright holders, performance rights extend to "for profit" performances only. This may include a free admission concert which furthers a commercial enterprise. The purpose of this limitation is to balance the public interest with those of the copyright owner. (Walls:107-121)

A radio or television station operated by a tax supported school or university may use any copyrighted music it chooses without payment of royalties. However, a station carrying commercial advertisements must pay

royalties for the use of musical works. (Siebert:47-48)

Dramatic productions are not limited, since public performance is considered the main source of revenue from them. Even amateur performances, given with no profit motive, may tend to lessen demand for paid performances. Therefore, school performances of musical dramas require payment of royalties. (Walls:109)

MECHANICAL RIGHTS: COMPULSORY LICENSE

Under section I(e) of the United States Copyright Law anyone has the right to mechanically reproduce (recording tape or record disc) a musical work, once the right to mechanically reproduce has been granted to one person by the copyright proprietor (customarily the publisher). In order to exercise this right a registered letter must be sent to both the copyright proprietor and the United States Copyright Office notifying them of the intent to mechanically reproduce the work. The Copyright Office requires the filing of Form U. After the mailing of the letters of intent the person making copies must remit two cents ($ .02) per copy for each copied work or portion thereof, as a royalty payment to the creator. (United States Copyright Office: 1969a)

PART-COPIES UNTESTED

In the review of literature and research for this study no references were located regarding any legal

test related to the making of single copies of parts of musical arrangements. However, evidence was found to satisfy the researchers that the intent of the law is to extend copyright protection to individual parts of musical arrangements. The United States Copyright Office requires that all individual parts must be filed in order to obtain registration (and protection) of a work, even when all parts are defined in the submitted musical score.

Gipe, in his book on the subject, states that there is "... no case of fair use related to a portion of a copyrighted work." (81) Berk, an attorney and legal advisor to the National Association of Jazz Educators, makes no mention of any such test in his otherwise comprehensive and thorough review of the copyright problems of music educators. (Berk, 1971a, 1971b, 1971c, 1971d, 1971e, 1972)

ECONOMIC DAMAGE TO PUBLISHERS

A study by Fry and his associates, conducted for the National Science Foundation, was conducted to determine if, and to what extent, economic damage is involved to the copyright holder in different forms of photoduplication practices. The study was confined to copyrighted science and technical books, journals, and pamphlets.

He found that the majority of publishers contacted encouraged photocopying their materials. Among the reasons

given were: (1) many were small publishers who gained increased circulation from this practice, (2) most found no substantial loss of revenue, and (3) authors in this area generally wrote for no profit. This study may have limited applicability to the questions under study in this research project, but they are most interesting and informative.

POSSIBLE SOLUTION

The American Society for Testing and Materials (ASTM), through its Committee to Investigate Copyright Problems Affecting Communications in Science and Education, Inc. (CICP), set up a government sponsored system whereby selected libraries could contract for copies (to a maximum of 50) of copyrighted materials, without legal liability for copyright infringement. As a part of their membership requirement contracting libraries were required to keep records of materials copied. Membership fees were then distributed to publishers on the basis of the percentage of copied materials to which they owned rights and their mean publishing cost per page.

Support for the CICP project lagged as a result of a 1968 court case in which the National Library of Medicine sought relief from copying charges, claiming public interest. The court ruled that making copies for clients of the library was an infringement of copyright.

Following the results of that case the United States Department of Health, Education and Welfare (HEW) withdrew its support of the CICP project.

Conclusions drawn from the data collected in the CICP project were that the project was generally successful in resolving the copying problem while allowing due profits to the publishers. A second finding (recommendation) was that a "Copyright Clearing House" should be established to serve the same function for contracting publishers and copiers. Another interesting fact which emerged from the temporary moratorium of liability to contracting libraries was that a significant change in copying patterns took place. Fewer than 25 per cent of the CICP publications copied were multiple copies. An unexpected effect was a renewal of purchases from publishers. This was attributed to a greater awareness of the problem by contracting libraries. (Helprin:8-43)

WISCONSIN CRACKDOWN

In 1969 the Wisconsin School Music Association (WSMA) passed the following regulation governing participation in their state contest:

> Any contestant participating in any solo events using self duplicating (Xerox, Thermofax, hand copied or the like) copyrighted material as copies for the judge, performer, or accompanist shall be summarily disqualified.

This action was taken by the WSMA

> . . . to insure that authors (composers) receive the encouragement to create and the remuneration they fairly deserve for their creations.

Commenting upon this the Music Educators National Conference (MENC) observed "since WSMA's action is merely enforcing the law we think it should be applauded." (Gary:92)

It is interesting to note that the rule cited (IX-C-5) merely mentions solo events. It certainly is formal recognition of a problem which exists and is one step toward solution.

SECURING PERMISSION FOR USE

Berk, discussing the various aspects of securing permission to use a copyrighted work makes several statements that are quite important. Among the steps he suggests are the following:

1. Permission for use or copying of a copyrighted material must be secured from the copyright owner or the copyright proprietor (usually the publisher) prior to use.
2. In acquiring such permission one should describe all possible uses in detail to the owner or proprietor.
3. Once permission is granted an overt statement of permission should appear on the work.
4. Nothing should be taken for granted. (1971a:)

In some cases the work of a composer may not be

legally his own. That is to say that a work done by a composer for someone else on a "for hire" basis would be the property of the person or institution which commissioned the work or contracted the services of the composer. In this case the owner would be different from the creator of the work. (Bogsch:2)

Any joint author may authorize the use of a joint work in the absence of a prior arrangement to the contrary. And, in the absence of a prior arrangement, all profits must be shared equally by the authors (creators). (Berk, 1972:73-77)

SUMMARY OF THE PROBLEM AS RELATED TO THE LITERATURE

Copies of parts of musical arrangements can be easily made by photocopying machines available in virtually every school office, if not installed in many music departments. The availability of such machines has made the duplication of inexpensive, quickly made copies of musical parts tempting to music educators. For the music educator copies of needed parts are available in a few minutes through the use of these machines. In contrast, to purchase an original copy would require several minutes of paper work, a day or more of processing and administrative approval, and several weeks to obtain the part from the publisher. In addition there is probably a disparity in the cost.

The temptation is obvious. The educator is pressed by limited rehearsal time, parental pressures for excellence, and a busy performance schedule. The pressure often is dictated more by his job than by his personal choice in the matter. In addition he may be, indeed often is, questioned about his expenditures. The path of expediency is easy - and the violation of the copyright ensues.

Based upon this review of the literature no case has been found where a publisher found it sufficiently important to bring suit against a music educator for copying single parts of a work. The question then is: Do publishers consider copying parts as unauthorized use? If the answer is yes (and this is the legally correct answer and the obvious one), then is it considered as a serious infringement of the copyright?

Without becoming legalistic, and it was pointed out earlier that this is not a legal treatise, the question can be asked: Might a band director (music educator) not legally furnish single copies of parts to students (scholars) for private use, much the same as do libraries archives, and museums, under the Gentlemen's Agreement? Might the rationale that the director (music educator) maintains a (music) library have applicability, particularly if (since) these materials are furnished for the use of individual band members without profit to the director?

Again, the law is clear, and the copyright owner

has the right to expect a return for the investment of his time, talent, and expertise.

Finally, do the publishers view their role as primarily that of producing complete arrangements of works or do they consider the sale of individual parts as a primary source of income?

This study is an attempt to answer these questions from the publishers point of view, and to sample data from band and choral directors as a point of contrast.

CHAPTER III

FINDINGS OF THE STUDY

This chapter presents an analysis of the data relating to the problem under study, based upon mailed opinionnaires and respondent replies. The two opinionnaires were titled Survey of (Educational) Music Publishers (SEMP) and Survey of Music Educators (SME). The SME instrument was administered to two sub-samples, band directors (SME-B) and choral directors (SME-C). Copies of all instruments, cover letters, and follow-up letters are contained in Appendix A.

MAIL RETURNS

On April 15, 1974 a sample of 50 (educational) music publishers was contacted, using the cover letter and instrument developed for this purpose. Approximately three weeks later a follow-up letter and duplicate instrument were mailed to the non-respondents. A total of 31 of those publishers contacted returned responses which were usable. This is a 62 per cent response, which is suffiecientlyhigh to permit generalizations being made to the population of music publishers.

On May 1, 1974 a sample of 50 band directors and 50 choral directors of randomly selected Indiana high schools was contacted, using the cover letter and instrument specifically designed for this purpose. Approximately three

weeks later a follow-up letter and duplicate instrument were mailed to non-respondents. A total of 31 band directors and 25 choral directors (in many cases the respondents identified themselves as functioning in dual capacities, however they were considered in the capacity in which they had been originally randomly selected) responded. Thus, a total of 62 per cent of the band directors and 50 per cent of the choral directors responded. When the two sub-samples are combined it was found that a total of 56 per cent of the randomly selected music educators responded to these requests for data. The responses are considered sufficient to permit generalizations to the population from which they were drawn.

DATA

Examination of the data presented in Table 1 shows that school band and choral directors tend to purchase more concert band size arrangements and that publishers tend to produce more of this type or size of arrangements. Examination of the data relating to choral music illustrates the possible source of confusion of responses. It might be expected that band directors would not indicate purchasing choral music nor choral directors indicate purchasing band music. Such was certainly not the case. Several respondents indicated that they held dual capacities with their schools. For this reason most interpretations

TABLE 1. TYPES OF EDUCATIONAL MUSIC PURCHASED BY TEACHERS AND PUBLISHED BY PUBLISHERS

Type of Music	SME-B f	SME-B %	SME-C f	SME-C %	Tot-SME f	Tot-SME %	SEMP f	SEMP %
March size	13	42	6	24	19	33	5	16
Concert Band size	19	61	16	64	35	62	20	65
Choral	5	16	9	36	14	25	18	58
Orchestra	0	-	2	8	2	4	3	10

Note: Multiple responses were received in many cases. Totals exceed 100 per cent.

Question: Of the three types of educational music in which type does your (company, school) have the most volume?
A. March size
B. Concert Band size
C. Choral
D. Orchestra

in the balance of this chapter will relate to the total responses received from music educators (Tot-SME). Only in those cases deemed highly significant will responses from "band" and "choral" directors be dealt with separately.

When queried regarding production of standard instrumentations such as "full band", "symphonic band" etc. (SEMP - Question 2) 81 per cent of the publishers responded that they did in fact publish these types of music, while 13 per cent did not respond. Only six per cent responded that they did not produce these types of

music.

When music educators were posed a similar question relating to their purchase of these types of music (SME - Question 2) 95 per cent of them responded affirmatively.

Of interest are the comments which were made in response to these questions, as well as some of the general comments made (see Appendixes B, C, and D). These indicate that several publishers have their own variations on standard instrumentations, which make it difficult for the music educator to know exactly what he is buying. It is believed, based upon assessment of the comments of the educators, that they purchase these standard instrumentations as these are the only ones available.

Next the publishers and music educators were queried as to their preference for securing extra parts of arrangements. These data are presented in Table 2.

It will be noted there is wide disparity between the opinions expressed by the two groups. Therefore these responses will be examined in some detail. Publishers overwhelmingly (78 per cent) expressed a preference to have extra parts purchased from them. This is certainly understandable in view of the fact that they are in business as a profit making enterprise and they would hesitate to authorize reproduction. Indeed, the purpose of obtaining a copyright is to protect the vested rights

TABLE 2. PREFERRED MEANS OF PROCURING EXTRA PARTS AS EXPRESSED BY MUSIC EDUCATORS AND PUBLISHERS

Means	SME-B f	SME-B %	SME-C f	SME-C %	Tot-SME f	Tot-SME %	SEMP f	SEMP %
Purchase from publ.	8	26	14	56	22	39	24	78
Hand copy	5	16	3	12	8	14	0	-
Photocopy	29	94	12	48	41	73	2	6
Other	1	3	3	12	4	7	2	6
					No Response		3	10

Note: Multiple responses were received from music educators in some cases. Totals exceed 100 per cent.

Question: Which of the following means (SEMP-would you prefer: SME-do you use) as a means for (SEMP-music educators to procure; SME-procuring) extra copies of parts of arrangements published by (SEMP-your company: SME-music publishing houses)?
A. Purchase from (SEMP-you: SME-company)
B. Hand copy
C. Photocopy
D. Other (explain)

of the composer and the publisher. To put it another way, and it is hoped that the reader will excuse the use of a cliche: "You don't buy the cow if you are getting the milk free." And it hardly need be added that publishers are in the "cow selling business." That publishers are aware of the problem is probably best illustrated by several comments received. The following selected comments are included for illustrative purposes. Complete transcripts of all comments from publishers are contained in Appendix B.

It is unlawful to duplicate any part of a copyrighted work. We are in business to sell music not to have it duplicated. (SEMP 46)

Which way would you like your property stolen from you? (SEMP 7)

A. Becaues I make more money. However - I have no objection to anyone copying a few parts - but not a complete set for another Director. (SEMP 15)

One publisher included as his comment a quotation from the "Exclusive Rights of Copyright Owner." The underlined emphases are his and were in red on the original response:

The copyright statute (Title 17, United States Code) lists the exclusive rights of a copyright owner. These include, among others, the exclusive right to print, reprint, publish, copy, and vend the copyrighted work, and to translate, dramatize, arrange or adapt it.

The exclusive rights of a copyright owner extend to the copyrighted work as a whole and to every copyrightable part of it. Violation of any of the exclusive rights mentioned above may be an infringement, whether innocent or intentional and whether for profit or not. (SEMP 5)

This question also elicited many responses from music educators. Some of their comments are reproduced here. All can be found in Appendix C.

C. Can't afford two sets of music! (SME-B 9)

A. B., and C. Only if separate parts are unavailable or in cases of emergency when time doesn't permit ordering new. (SME-B 24)

B. and C. I won't write publisher for 3 single parts needed - I will run off, have immediately, cheaper. I can't help if I have more saxaphones, flutes, t-bones than regular shipment of music allows. (SME-C 37)

It is hoped that these comments at least shed some light upon the dichotomous opinions expressed by the respondents and presented in Table 2.

Music educators, when asked if they secured permission from the publisher before making a photocopy (SME - Question 5) unanimously responded "No" or failed to respond to the question. Few comments were elicited from the teachers and these tended not to shed any additional light upon the subject.

Publishers responded "Yes" by a margin of 17 to nine when queried if they objected to photocopies being used as temporary substitutes for extra parts which are on order from them (SEMP - Question 5). Sevaral made comments that this practice was illegal. Those nine publishers who responded "No" to the question qualified their response in every case. The qualifications were that the copies be destroyed when the published copies were received and that permission be sought for copying. An additional concern, perceived by the researchers but not directly expressed by the publishers, is the publishers concern about a possible interpretation of mechanical rights reproduction which could extend the license to copy to everyone by granting it to one music educator.

Educators and publishers were then asked about the profit involved in the sale of extra parts to schools. (SEMP - Question 6; SME - Question 7).

Examination of the data presented in Table 3 shows that music educators are about equally divided in their opinions concerning the existence of profit in providing extra parts to bands and orchestras. The publishers, by a seven to one majority deny the existence of profit in this activity.

TABLE 3. OPINIONS OF RESPONDENTS CONCERNING PUBLISHER PROFIT IN PROVIDING EXTRA PARTS

Opinion	SME-B f	SME-B %	SME-C f	SME-C %	Tot-SME f	Tot-SME %	SEMP f	SEMP %
Yes	14	45	10	40	24	43	3	10
No	15	48	12	48	27	48	23	74
No Response	2	6	3	12	5	9	5	16
Total	31	100	25	100	56	100	31	100

Question: Do you believe music publishing houses derive substantial profits from the sale of extra parts to schools?

___ Yes ___ No (SME)

Does your company derive substantial profit from the sale of extra parts to schools?

___ Yes ___ No (SEMP)

The comments received in response to this question were varied and reflected a diversity of opinion. One comment received from a publisher certainly gives cause for thought regarding why most publishers do not realize a profit from the sale of extra parts:

No, because the schools are illegally copying. And, incidentally teaching the students to ignore the law of the land. (SEMP 7)

A common theme running through the comments by educators is to the high cost of music. No data are readily available but the presumption can be made that the impact of inflation is no greater on the music publishing industry than on the other branches of publishing.

In connection with this question music educators were asked if they placed orders for extra parts from publishers (SME - Question 6). This question had no counterpart in the instrument administered to publishers but their comments certainly touched upon the matter. Data are presented in Table 4.

TABLE 4. RESPONSES FROM EDUCATORS RELATING TO THEIR PRACTICE OF ORDERING EXTRA PARTS FROM PUBLISHERS

Response	SME-B f	SME-B %	SME-C f	SME-C %	Tot-SME f	Tot-SME &
Yes	10	32	12	48	22	39
No	9	29	7	28	16	29
No Response	12	39	6	24	18	32
Total	31	100	25	100	56	100

Question: If you checked "A" in No. 4 above, do you place orders for the extra parts you need from the publishing houses?

Based upon the data presented there appears to be a disparity between what the music educators report as their practice and what publishers perceive to be the case.

> I've had one order for extra parts in (the) past year. I do get a good many orders for extra scores. (SEMP 15)

> Publishers helped to create the problem by "customizing" the sale of band sets at the outset of band publishing by selling a minimal instrumentation and offering extra parts. They were in the business of selling individual parts as much as complete sets. . . . parts are (now) printed in 8 and 16-page signatures, collated by machine, etc. The problem of selling extra parts now involves breaking complete sets, plus the additional problem of inventorying leftovers and labor to handle it. . . . (SEMP, Edmondson, Appendix D)

Publishers and music educators were also queried concerning their knowledge about any legal action being taken against teachers for copying single parts of an arrangement (SEMP - Question 7; SME - Question 8) Only four per cent of the teachers gave an affirmative answer while 23 per cent of the publishers responded positively. Not one person gave any concrete data to help locate such a case. One response was of interest

> Question 7 is simply unfair. It is like asking: Do you know of anyone who has been arrested and convicted for stealing a cello? Well, I have read of persons convicted of stealing color TV's, electric typewriters, HI FI's and even violins, but not necessarily a cello. (abstracted from correspondence with Donald Waxman of Galaxy Music Corporation - See Appendix D)

Apoligies are tendered for the confusion the question may have caused among respondents, but the intent was to add to the completeness of the study. The basic issue

still appears to be that individual copying by individual teachers appears to be (to them) a small problem yet to the publishing industry as a whole it is a matter of major economic impact. Conversely, no publisher appears inclined to prosecute any single music educator for copyright violation nor to prosecute large numbers of teachers because of the expense, time, and possible loss of business which would result. This position is probably best explained in a portion of a letter from Ernest R. Farmer, President of Shawnee Press, Inc. (see Appendix D):

> I trust you understand that these remarks are not intended personally. For a number of years, both independently and in cooperation with the Music Publishers' Association, we have strongly put forward the proposition that the question of "to copy or not to copy" was essentially a moral one (rather than "practical" or "economic") of "to steal or not to steal."

The next several pages of this paper will deal with expressed opinions concerning varying degrees of seriousness of copying various types of music by certain methods. Data are presenetd in Tables 5 through 10 inclusive. Because of the similarity of the questions data will be dealt with collectively, that is, little distinction will be made between photocopying and hand copying of concert and march size band or orchestra parts and vocal music parts. These questions were asked separately of respondents, but upon analysis similarities

TABLE 5. OPINIONS EXPRESSED REGARDING MAKING OF SINGLE PHOTOCOPIES OF CONCERT SIZE BAND OR ORCHESTRA PARTS

Response	SME-B f	SME-B %	SME-C f	SME-C %	Tot-SME f	Tot-SME %	SEMP f	SEMP %
Authorized with purchase of arr.	6	19	2	8	8	14	0	-
"fair use"	8	27	7	28	15	28	2	6
Unauthorized not serious	11	35	8	32	19	33	3	10
Unauthorized serious	1	3	2	8	3	5	18	58
Other, explain	1	3	1	4	2	4	2	6
No response	4	13	5	20	9	16	6	19
Totals	31	100	25	100	56	100	31	100

Question: Music educators make single photocopies of individual concert-size band or orchestra parts.

in response patterns were observed which makes this method of analysis more meaningful.

The first contrast to be observed was that a small number of music educators responded that they believed that reproduction of single parts of arrangements was authorized with the purchase of these arrangements. In no case did any publisher indicate that this was the case and certainly no examination of the law would lead to this conclusion.

A selection of remarks made by music educators may shed some light upon this expressed attitude (assumption)

TABLE 6. OPINIONS EXPRESSED REGARDING MAKING OF SINGLE HAND COPIES OF CONCERT SIZE BAND OR ORCHESTRA PARTS

Response	SME-B f	SME-B %	SME-C f	SME-C %	Tot-SME f	Tot-SME %	SEMP f	SEMP %
Authorized with purchase of arr.	4	13	2	8	6	11	1	3
"fair use"	10	32	9	36	19	34	0	-
Unauthorized not serious	8	26	7	28	15	27	6	19
Unauthorized serious	0	-	1	4	1	2	15	48
Other, explain	2	6	1	4	3	5	3	10
No response	7	23	5	20	12	21	6	19
Totals	31	100	25	100	56	100	31	100

Question: Music educators make single hand copies of individual concert-size band or orchestra parts.

on the part of music educators. These remarks are taken from selected remarks made in response to all questions in this category:

> Depends on a number of factors which might be involved. (B 31)
>
> Always have enough copies. (C 39)

A significantly higher number of respondents who were music educators replied that they believed the copying of single parts to be "fair use." This is worthy of examination. Few publishers responded that they believed this to be the case. Since the area of fair use is legally

TABLE 7. OPINIONS EXPRESSED REGARDING MAKING OF SINGLE PHOTOCOPIES OF MARCH SIZE BAND OR ORCHESTRA PARTS

Response	SME-B f	SME-B %	SME-C f	SME-C %	Tot-SME f	Tot-SME %	SEMP f	SEMP %
Authorized with purchase of arr.	6	19	1	4	7	12	0	-
"fair use"	8	26	8	32	16	29	1	3
Unauthorized not serious	10	32	8	32	16	29	4	13
Unauthorized serious	1	3	2	8	3	5	17	55
Other, explain	1	3	1	4	2	4	2	6
No response	5	16	5	20	10	18	7	23
Totals	31	100	25	100	56	100	31	100

Question: Music educators make single photocopies of individual, march size band or orchestra parts.

unclear as it relates to making single copies, and the instrument did not define the term, there may be some confusion on the part of music educators as to what was meant. The following comments are illustrative:

> If music educator purchases a full band arrangement he should be allowed to make a few copies to fill out requirements of an oversize section . . . If music educator purchases a single copy . . . he should not make multiple copies to give to rest of band.
>
> Choral music would seem to apply to the latter case. . . . (B 10)
>
> This is after buying at least two march size copies or one Symphonic size concert copy. (B 21)

TABLE 8. OPINIONS EXPRESSED REGARDING MAKING OF SINGLE HAND COPIES OF MARCH SIZE BAND OR ORCHESTRA PARTS

Responses	SME-B f	SME-B %	SME-C f	SME-C %	Tot-SME f	Tot-SME %	SEMP f	SEMP %
Authorized with purchase of arr.	5	17	1	4	6	11	0	-
"fair use"	10	32	7	28	17	30	0	-
Unauthorized not serious	10	32	10	40	20	36	5	16
Unauthorized serious	0	-	1	4	1	2	15	48
Other, explain	2	6	1	4	3	5	4	13
No response	4	13	5	20	9	16	7	23
Totals	31	100	25	100	56	100	31	100

Question: Music educators make single hand copies of individual march size band or orchestra parts.

When the relative seriousness of the copying of single parts is considered from the viewpoints of music educators and publishers there is again a distinct contrast in expressed attitudes. The publishers, for obvious reasons believe it is serious, while educators, though recognizing that it is unauthorized, tend to view it as less serious. The difference in attitudes is apparent in each of the tables presented (5 - 10).

Again, a presentation of selected comments may help clarify some of the responses received on the instrument.

TABLE 9. OPINIONS EXPRESSED REGARDING MAKING OF SINGLE PHOTOCOPIES OF VOCAL PARTS

Responses	SME-B f	SME-B %	SME-C f	SME-C %	Tot-SME f	Tot-SME %	SEMP f	SEMP %
Authorized with purchase of arr.	5	16	2	8	7	12	0	-
"fair use"	10	32	6	24	16	29	1	3
Unauthorized not serious	7	23	6	24	13	23	1	3
Unauthorized serious	5	16	2	8	7	12	20	65
Other, explain	1	3	3	12	4	7	1	3
No response	3	10	6	24	9	16	8	26
Totals	31	100	25	100	56	100	31	100

Question: Music educators make single photocopies of vocal parts.

Many publishers have reduced this problem by charging more and including more fl., sax etc. parts. This is not the problem it once was. (B 15)

I feel that it is really better to photocopy single parts or a few copies of parts rather than bother the publisher. I feel that copying entire sets is grossly unfair, however. (B 16)

There are emergency situations. There is also a lot of red tape involving time with school purchase orders - which could delay performances or even cancel them. Many publishers are not up to date in providing proper band instrumentation for modern bands. . . . School budgets limit amounts purchased. (B 31)

. . . getting extra parts from a publisher is almost impossible. They want to sell the whole arrangement or nothing. (B 40)

TABLE 10. OPINIONS EXPRESSED REGARDING MAKING OF SINGLE HAND COPIES OF VOCAL PARTS

Responses	SME-B f	SME-B %	SME-C f	SME-C %	Tot-SME f	Tot-SME %	SEMP f	SEMP %
Authorized with purchase of arr.	1	3	1	4	2	4	0	-
"fair use"	12	39	7	28	19	33	1	3
Unauthorized not serious	7	23	5	20	12	21	3	10
Unauthorized serious	2	6	3	12	5	9	19	61
Other, explain	2	6	1	4	3	5	1	3
No response	7	23	8	32	15	27	7	23
Totals	31	100	25	100	56	100	31	100

Question: Music educators make single hand copies of vocal parts.

The publisher, as can be gathered from the following comments tends to take an entirely different view of the matter of unauthorized copying. The following are but a few of the comments received:

> All of this is illegal no matter what type of music or how reproduced. The only exception would be if the publisher could not make the necessary parts available - In that case all publishers would grant permission. (P 6)

> I find these questions incredible! Since 1953, approximately 50 educational/standard publishers have disappeared largely through the determined efforts of the schools and churches to Xerox them to death. The copyright law leaves the right to copy with the

copyright owner and publishing companies are structured to pay the composers and are based on this obvious fact. (P 7)

. . . The sale of extra parts is usually a money-losing service but it is the easiest and most convenient <u>legal</u> way to provide extra parts to customers. (P 11)

For #12-13 (choral music). This to me is the area of most flagrant violation. A choral director can buy one 25¢ score and copy 40 parts. Not fair to publisher and could eventually lead to no new published choral works available. (P 15)

Perhaps the biggest problem in the duplication area is the attitude that the music educator assumes or displays regarding music. Music is not a free commodity, such as air, water, etc. The thought of "borrowing" someone's tires from his automobile for an evening would horrify most music educators. But the thought of duplicating a composer's or publisher's music without any financial remuneration does not seem wrong. In reality it is just as wrong to "steal" the use of music as it is to steal the use of someone's tires or automobile for a period of time. (P 17)

Is there a branch of education that teaches students to steal or cheat? If not, why abuse the music business? Any publisher must sell his product in order to produce new material for the future. (P 27)

"Serious" or "not serious" depends upon <u>intent</u>. In any case, the composer and/or arranger is the one who is shortchanged! You are evaluating the difference between stealing 30¢ worth of groceries against $30. worth - in either case it is stealing! (P 37)

A complete transcript of all comments will be found in Appendixes B, and C of this study. Copies of pertinent correspondence with publishers is contained in Appendix D.

CHAPTER IV

SUMMARY, FINDINGS, AND CONCLUSIONS

This final chapter is presented in three sections. The first section deals with the problem studied, summarizes the pertinent literature and related research, and outlines the data collection procedures which were followed. The second section recapitulates the findings of the research itself. The third and final section presents certain conclusions which were drawn from the data and findings and presents recommendations for further study.

SUMMARY

The problem. It was the purpose of this study to present the opinions of educational music publishers' opinions regarding music educators' copying single individual parts of purchased arrangements. A comparison of opinions was also sought from a random sample of band and choral directors in the State of Indiana. It was believed that this information should be of value to music publishers and should be available to music educators as a reference for their moral and ethical guidance, not to mention their legal responsibilities.

Related literature. A review of related literature revealed some opinion articles directly related to the problem, but no prior effort to obtain objective data relating to the specific problem was found. The copyright

law was found to be very clear, giving total rights of publication and duplication to the copyright owner. However, the issue may have been confused somewhat by the judicial interpretation of "fair use" and the 1935 Gentlemen's Agreement. Further, the present copyright law was enacted in 1909, when photocopy machines were not in existence. This law was originated and enacted with the intent of making creativity profitable, and has, for the most part, been interpreted in this manner. This has been done to insure the continuation of new creations.

Methodology. A normative survey was conducted, using instruments specifically designed for the study. The instruments were initially mailed to 50 educational music publishers and 100 randomly selected Indiana music educators. A follow-up letter and instrument were mailed to non-respondents to increase the per cent of responses.

Replies were analyzed using per cent of responses, plus selected comments that were illustrative of the replies received for each item.

FINDINGS

The following findings, indicated by the analysis of the data, were reported. Generalizations were drawn to the population from which the sample was drawn because of the per cent of response received in each category.

Music publishers and music educators are in disagreement relative to the major thrust of this study. That is, music publishers do not favor any type of unauthorized copying of their music. Music educators report that they do copy single extra parts of needed music.

Music publishers reported that they do provide standard instrumentations; however several reported variations from "standards" in their comments. Music educators indicated some degree of dissatisfaction with the "standard instrumentations" they purchased from publishers.

Music educators reported unanimously that they did not secure permission before making photocopies. Their reasons could be basically summarized as "expediency." The publishers, by a wide majority, responded that they would not approve of the use of photocopies as temporary substitutes for extra parts which are on order from them.

Publishers indicated in their comments that their primary concern in selling extra parts was to provide their composers with rightfully earned royalties, thus maintaining their obligation to their composers and their source of creative effort.

Music educators who responded to the instrument reported by a majority of three to two that they do order extra parts from publishers.

Music educators do not consider copying single parts of of published arrangements as being a serious

infraction of the law. Music publishers consider any copying of their published materials as serious infringement upon their rights.

CONCLUSIONS

Based upon the data collected, the analyses made, and the findings reported, the following conclusions were drawn:

1. The law is quite clear, there is no reason for any music educator to make any unauthorized copies of any parts of any music.

2. The results of this survey confirm that music educators do make unauthorized copies, and that music publishers are aware of this practice, but to date have taken no legal recourse toward remedying this situation.

3. Variations in the standard instrumentations used by music publishers are sufficient to dilute the value of ordering (using) standard instrumentations.

4. Music publishers and educators are in basic disagreement in their opinions concerning the seriousness of making copies of parts. Music publishers view this practice as a serious infringement of their rights and their responsibility to their composers. Music educators view the practice of copying as either "fair use" or as copyright infringement, but not as being serious.

Recommendations. The following general recommendations are made, not in any general order of importance, but with the intention of providing a point of discussion and departure for both the music educator and the music publisher.

1. That music educators cease making unauthorized copies of music. This is a clear vilolation of the law. Of more importance than the legal aspects are the moral and ethical requirements. Children are taught by example and this copying is, at best, a very poor example.

2. Publishers should provide a clear definition of what parts are included with a publisher's arrangements when they are advertized. Provide the opportunity for the teacher to order extra parts with the initial order, thus making it possible to permit the teacher to have sufficient parts on hand.

3. Publishers might wish to increase the initial price of each set of standard instrumentations and grant the right to reproduce a specified number of extra parts at the discretion of the teacher. This would insure the composer and publisher their justly deserved royalty and profit and permit the teacher to remain within the law.

4. Music educators should plan their requirements far enough in advance to order needed extra parts. If they fail in this they should be prepared to substitute other musical arrangements for which sufficient copies are available.

5. Music publishers and music educators should join together to acquaint the general public with the cost of music today, the rights and responsibilities of all those engaged in composing, publishing, teaching, and playing music.

6. Professional music associations should follow the example of the Wisconsin School Music Association and set an example by banning the use of all but published arrangements at any and all sanctioned music contests.

7. Music publishers, through their professional associations, should examine the practices of their member firms relative to providing prompt service when extra parts are ordered.

Note: All raw data are on file in the Indiana University at South Bend Library. Interested parties may obtain photostatic copies (w/0 identification) of data by contacting

Librarian
Indiana University at South Bend
1825 Northside Blvd.
South Bend, IN 46615

Data are available for personal examination upon written request to librarian, by appointment.

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APPENDIXES

A. Instrumentation and Cover Letters

B. Comments from Publishers

C. Comments from Music Educators

D. Letters from Publishers

This letter was previously sent you. We hope you will be able to cooperate with us. Thanks J.C.M. 5-14-74

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DIVISION OF EDUCATION
TEL. NO. 219 -282-2341

Appendix A

April 15, 1974

Gentlemen:

I am presently conducting research to determine the opinions of publishers of music relating to the making of copies of individual parts of their arrangements. I am particularly interested in this subject as it relates to the music used in school bands and orchestras.

Your firm has been selected as one of a limited number of firms to participate in this study. I would appreciate it if you would complete the enclosed questionnaire and return it in the enclosed self-addressed, stamped envelope. As a respondent you will be provided with a summary of the results of this study.

Sincerely,

Jerry C. Mitchell

Jerry C. Mitchell
Graduate Student

Approved:

Charles R DuVall

Charles R. DuVall
Associate Professor

Survey of (Educational) Music Publishers

Appendix A

Please complete the following questionnaire. The following are definitions of terms used:

Music Educator is any person teaching music in a public or parochial school, where no personal profit is realized from the duplication of music.

Photocopies refers to individually produced copies.

Concert Size Music is music of a size suitable for concert use, including octave size as the smallest.

March Size Music is any music of a size which will fit into a marching band folio.

Please circle the most appropriate response. Use space for remarks. Use additional sheets if necessary.

1. Of the three types of educational music, in which type does your company have the most volume?
   A. March size Remarks:
   B. Concert Band size
   C. Choral
   D. Orchestra

2. Does you company produce standard instrumentations such as "full band," "Symphonic band," etc.?
   __ Yes __ No

3. Are your standard instrumentations "industry wide" ones?
   __ Yes __ No

4. Which of the following means would you prefer as a means for music educators to procure extra copies of parts of arrangements published by your company?
   A. Purchase from you Remarks:
   B. Hand copy
   C. Photocopy
   D. Other (explain)

5. If you checked "A" in No. 4 above, do you object to a photocopy being used as a temporary substitute for an extra part which is on order from your firm?
   __ Yes __ No

6. Does your company derive substantial profit from the sale of extra parts to schools?
   __ Yes __ No

Please turn page

7. Are you aware of any music publisher bringing legal action against any music educator or school for copying single parts of an arrangement?

___ Yes ___ No Appendix A

If "yes" please give me the case reference (if readily available).

Please circle the most applicable number to indicate your opinions about the following statements.

1. Authorized, with purchase of arrangement
2. "fair use"
3. Unauthorized use, but not serious
4. unauthorized use, serious
5. Other, explain

8. Music educators make single photocopies of individual, concert-size, band or orchestra parts.

1 2 3 4 5

9. Music educators make single hand copies of individual, concert-size, band or orchestra parts.

1 2 3 4 5

10. Music educators make single photocopies of individual, march-size, band or orchestra parts.

1 2 3 4 5

11. Music educators make single hand copies of individual, march-size, band or orchestra parts.

1 2 3 4 5

12. Music educators make single photocopies of vocal parts.

1 2 3 4 5

13. Music educators make single hand copies of vocal parts

1 2 3 4 5

Additional comments

Use additional sheets if necessary

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INDIANA UNIVERSITY at SOUTH BEND
1825 NORTHSIDE BOULEVARD
SOUTH BEND, INDIANA 46615
DIVISION OF EDUCATION
TEL. NO. 219 - 282-2341

Appendix A

, May 1, 1974

Dear Teacher:

I am presently conducting research to determine the opinions of music educators such as yourself relating to the making of copies of individual parts of arrangements. I am particularly interested in this subject as it relates to school bands and orchestras.

You have been selected as one of a limited number of music educators to participate in this study. I would appreciate it if you would complete the enclosed questionnaire and return it in the enclosed self-addressed, stamped envelope. As a respondent you will be provided with a summary of the results of this study.

Sincerely,

Jerry C. Mitchell

Jerry C. Mitchell
Graduate Student

Approved:

Charles R DuVall

Charles R. DuVall
Associate Professor

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Survey of Music Educators Appendix A

Please complete the following questionnaire. The following are definitions of terms used:

Music Educator is any person teaching music in a public or parochial school, where no personal profit is realized from the duplication of music.

Photocopies refers to individually produced copies.

Concert Size Music is music of a size suitable for concert use, including octave size as the smallest.

March Size Music is any music of a size which will fit into a marching band folio.

Please CIRCLE the most appropriate response. Use space for remarks or clarification. Use additional sheets if necessary.

1. Of the three types of educational music, in which type does your school (department) have the most volume?
   A. March size Remarks:
   B. Concert band size
   C. Choral
   D. Orchestra

2. Does your band (orchestra) use standard instrumentations such as "full band," "Symphonic band," etc.

   _____Yes _____No

3. Do you purchase your standard instrumentations from music publishers within the industry?

   _____Yes _____No

4. Which of the following means do you use as a means for procuring extra copies of parts of arrangements published by music publishing houses?
   A. Purchase from company Remarks:
   B. Hand copy
   C. Photocopy
   D. Other (explain)

5. If you checked "A" in No. 4 above, do you secure permission from the publisher before making photocopies of the extra parts you need?

   _____Yes _____No

6. If you checked "A" in No. 4 above, do you place orders for the extra parts you need from the publishing house?

   _____Yes _____No

7. Do you believe music publishing houses derive substantial profits from the sale of extra parts to schools?

   _____Yes _____No

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8. Are you aware of any music publishers bringing legal action against any music educator or school for copying single parts of an arrangement?

Appendix A

____ yes ____ no

(If "yes" please give me the case reference if readily available).

Please circle the most applicable number to indicate your opinions about the following statements.

1. Authorized with purchase of arrangement
2. "Fair use"
3. Unauthorized use, but not serious
4. Unauthorized use, serious
5. Other, explain

9. Music educators make single photocopies of individual, concert-size, band or orchestra parts.

1 2 3 4 5

10. Music educators make single hand copies of individual, concert-size, band or orchestra parts

1 2 3 4 5

11. Music educators make single photocopies of individual, march-size, band or orchestra parts.

1 2 3 4 5

12. Music educators make single hand copies of individual, march-size, band or orchestra parts.

1 2 3 4 5

13. Music educators make single photocopies of vocal parts

1 2 3 4 5

14. Music educators make single hand copies of vocal parts

1 2 3 4 5

15. Music educators make multiple photocopies of vocal parts

1 2 3 4 5

16. Music educators make multiple photocopies of band or orchestra parts.

1 2 3 4 5

Comments

Use additional sheets if necessary

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Survey of Music Educators

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Please CIRCLE the most appropriate response. Use space for remarks or clarification. Use additional sheets if necessary.

1. Of the three types of educational music, in which type does your school (department) have the most volume?
   A. March size — Remarks:
   B. Concert band size
   C. Choral
   D. Orchestra

2. Does your band (orchestra) use standard instrumentations such as "full band," Symphonic band," etc.

   _____ Yes _____ No

3. Do you purchase your standard instrumentations from music publishers within the industry?

   _____ Yes _____ No

4. Which of the following means do you use as a means for procuring extra copies of parts of arrangements published by music publishing houses?
   A. Purchase from company — Remarks:
   B. Hand copy
   C. Photocopy
   D. Other (explain)

5. If you checked "A" in No. 4 above, do you secure permission from the publisher before making photocopies of the extra parts you need?

   _____ Yes _____ No

6. If you checked "A" in No. 4 above, do you place orders for the extra parts you need from the publishing house?

   _____ Yes _____ No

7. Do you believe music publishing houses derive substantial profits from the sale of extra parts to schools?

   _____ Yes _____ No

APPENDIX B

SUMMARY OF SELECTED COMMENTS RELATING TO THE OPINIONAIRE "SURVEY OF (EDUCATIONAL) MUSIC PUBLISHERS," CLASSIFIED BY ITEM

Item 1. "Of the three types of educational music, in which type does your company have the most volume? A. March size, B. Concert Band size, C. Choral, D. Orchestra"

"Of band material, concert band is highest volume, but chorals sell more 'units.'" (P3)

"All 4 - we are a major publisher." (P4)

"? dollars ? #'s ?" (P7)

"None Our company deals almost entirely in jazz stage band and vocal music,..." (P13)

"1. Choral, 2. Concert Band size" (P16)

"March size, Concert Band size, Jazz/Rock - Stage Band, about equal - all 3." (P17)

"Concert, Choral, March" (P27)

"We publish solo and ensemble, concert band, stage band material." (P46)

"(E) METHODS" (P9)

Item 2. "Does your company produce standard instrumentations such as 'full band,' 'Symphonic band,' etc.?"

"We use 'Complete Band' or concert band, which is symphonic instrumentation with more parts." (P3)

"Concert Bands are now being printed as Complete Band." (P11)

"A single 'symphonic' set that more than conforms to CBDNA - ASBDA standards." (P16)

"Complete only = more parts than symphonic." (17)

"'Symphonic band' only" (P23)

"Yes, but only 'complete band' which approximates the old 'symphonic.'" (P38)

"with exceptions" (P35)

"Symphonic Band only" (P22)

Item 3. "Are your standard instrumentations 'industry wide' ones?"

"Plus extras" (P6)

"plus additional parts" (P7)

"See above (comment for question 2) - Can't speak for the 'industry,' but probably 'yes,'" (P16)

"They are bigger." (P23)

"To my knowledge there is no industrial uniformity in this area" (P26)

"Plus some augmented percussion parts in certain stage band works." (46)

Item 5. "If you checked 'A' in No. 4 above, do you object to a photocopy being used as a temporary substitute for an extra part which is on order from your firm?"

"Buyers should order well in advance on this 'service' item." (P3)

"No, presuming it is destroyed when the legitimate copy arrives." (P15)

"Yes, officially" (P23)

"Only if we cannot immediately supply & permission from us has been obtained" (P35)

"Answer is 'No,' providing permission is asked" (P22)

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Item 4. "Which of the following means would you prefer as a means for music educators to procure extra copies of parts of arrangements published by your company? A. Purchase from you, B. Hand copy, C. Photocopy, D. Other (explain)"

"In our case, extra parts are available only from our affiliated retail outlets - not direct from publisher." (P3)

"We only would allow purchase" (P4)

"A. Any other way is illegal" (P6)

"Which way would you like your property stolen from you?" (P7)

"A., Because I make more money. However - I have no objection to anyone copying a few parts - but not a complete set for another Director." (P15)

"A. or retail dealer with whom the educator is accustomed to dealing." (P16)

"A. And no other." (P23)

"C. This is what is being done today and I see no way of stopping it - However granting this much license would probably blow the cover off the law" (26)

"From the local dealer or directly from the publisher if the dealer will not order same." (P27)

"We include enough parts in our Band Arrangements to eliminate the need for extra parts." (30)

"A. Extra parts should be purchased when the original order is made!" (P37)

"A or C depending upon quantity. Handling 2 or 3 parts is not profitable (probably a loss) for publisher & dealer. Larger quantities should be purchased." (P38)

"It is unlawful to duplicate any part of a copyrighted work. We are in business to sell music not to have it duplicated." (P46)

"Purchase from music Dealer or from us direct." (P29)

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Item 6. "Does your company derive substantial profit from the sale of extra parts to schools?"

"Any publisher will tell you it is a 'service' item and involves a loss, not a profit." (P3)

"It opperates at a loss That is why we try to give enough parts" (P6)

"No, because the schools are illegally copying. And, incidentally teaching the students to ignore the law of the land." (P7)

"I've had one order for extra parts in past year. I Do get a good many orders for extra scores." (15)

"Don't know your definition of 'substantial.' In my case, whatever income is derived from this source is shared by contract with composer." (16)

"Its puraly a service" (P23)

"No the parts are added in order to offer each of the students an opportunity to perform." (P27)

Item 7. "Are you aware of any music publisher bringing legal action against any music educator or school for copying single parts of an arrangement?"
"If 'yes' please give me the case reference (if readily available)."

"check NMPA" (P6)

"No, but the attitude of the music publishing industry as I understand it is, 'Let's wait and see what kind of new (c) law congress comes up with' so the basis for any subsequent legal action may be more clearly defined." (P16)

"I believe the Music Industry Council has taken action in the past." (P17)

"Cannot give case without considerable time & examination of records" (P21)

"Sorry, this is confidential." (P27)

"Suggest you check MPPA!" (P37)

"NOT YET" (P3)

"not available" (P47)

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Item 8. "Music educators make single photocopies of individual, concert-size, band or orchestra parts."

"2 ('fair use') If they purchase a complete set of parts & use purchased parts & copies for only one Band." (P15)

"Infringement" (P23)

"Educators should get permission from a publisher to copy band parts up to a fixed quantity on a continuing basis." (P38)

Item 9. "Music educators make single hand copies of individual, concert-size, band or orchestra parts."

"Too much trouble to Music Educator." (P15)

"4 (unauthorized use, serious) besides being time consuming, wasteful & uneconomic." (P16)

"Ingringement" (P23)

"Why would they do it? If to alter the arrangement it should be with special permission. Otherwise No. 8 applies." (P38)

Item 10. "Music educators make single photocopies of individual, march-size, band or orchestra parts."

"Infringement" (P23)

"same as no. 8" (P38)

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Item 11. "Music educators make single hand copies of individual, march-size, band or orchestra parts."

"Too much Trouble." (P15)

"see #9" (P16)

"Infringement" (P23)

"same as no. 8" (P38)

Item 12. "Music educators make single photocopies of vocal parts."

"Why would they want to? If a student loses his choral copy it's certainly possible to 'look on' in rehearsal until a replacement can be purchased." (P16)

"Infringement" (P23)

"This is a completely unjustifiable practice which will lead to very serious conditions detrimental to the industry and education. It is comparable to teaching young people that shoplifting is ok because it is 'petty.' It may be a factor in our company discontinuing choral publications. Everyone with authority in the educational field should be made aware of the seriousness of this blatant disrespect not only for clearly defined law but for ethics and integrity and in full view of the young people to whom the educator is responsible. This, of course, applies to cases where many copies are made & without permission." (P38)

Item 13. "Music educators make single hand copies of vocal parts."

"Infringement" (P23)

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Additional comments

"...e would only allow non-purchased material to be used if permission is granted first." (P4)

"All of this is illegal no matter what type of music or how reproduced. The only exception would be if the Publisher could not make the necessare parts available - In that case all publishers would grant permission -" (P6)

"I find these questions incredible! Since 1953, approximately 50 educational/standard publishers have disappeared largely through the determined efforts of the schools and churches to xerox them to death. The copyright law leaves the right to copy with the copyright owner and publishing companies are structured to pay the composers and exist based on this obvious fact." (P7)

"It is not the occasional copying of individual parts that is serious, but the wholesale photocopying of whole arrangements that will eventually force publishers out of business. Most publishers will give permission for making copies of parts to meet an emergency." (P8)

"8-10 are all illegal without written permission of the copyright owner.

The sale of extra parts is usually a money-losing service but it is the easiest and most convenient legal way to provide extra parts for customers." (P11)

"I am happy that someone is making a survey of this important topic, and you are to be commended for your efforts. In my opinion, the unauthorized copying of music (copyrighted) by Xeroxing or other means constitutes theft. Publishers have rather large overhead expenses including printing costs, royalty payments, composer's fees, etc., to say nothing of the cost of expensive advertising and promotion. For the schools to say that such copying is for 'non-profit' or 'educational' purposes certainly does not rectify the act of copying. Illegal copying of copyrighted materials by anyone denies the publisher and the music dealer of their just means of livelihood. Lack of the prospect of some financial profit also would discourage the creation of new music by composers. If their work can be copied at random by the public the creators and publishers of new music will be greatly diminished. It is high time that the public learns to respect its creative business elements and to respect the laws relative to copyrighted materials. I am definitely against any form of illegal copying of copyrighted matter." (P14)

"For #12-13: This to me is the area of most flagrent violation. A choral Director can buy one 25¢ score & copy 40 parts. Not fair to publisher & could eventually lead to no new published choral works available." (P15)

"Perhaps the biggest problem in the duplication area is the attitude that the music educator assumes or displays regarding music. Music is not a free commodity, such as air, water, etc. The thought of 'borrowing' someone's tires from his automobile for an evening would horrify most music educators. But the thought of duplicating a composer's or publisher's music without any financial remuneration does not seem wrong. In reality, it is just as wrong to 'steal' the use of music as it is to steal the use of someone's tires or automobile for a period of time." (P17)

"The abuse in making photocopies of chorals is at least as serious as with Band parts - if not more so. Don't forget the loss to composers & arrangers as well as publishers!" (P19)

"'fair use' if applied to educational copying will destroy our industry" (P23)

"None of these (items 8-13) could be implemented - There are numerous instances of all 5 statements occuring in 8-9-10- and 12 very few educators spend time with hand copying." (P26)

"Is there a branch in education that teaches students to steal or cheat? If not, why abuse the music business. Any publisher must sell his product in order to produce new material for the future." (P27)

"'Serious' or 'Not Serious' depends on <u>intent</u>. In any case, the composer and/or arranger is the one who is shortchanged! You are evaluating the difference between stealing 30¢ worth of groceries against $30. worth - in either case it is stealing!" (P37)

"All school music departments have budgets for new music. They should purchase extra parts as needed." (P46)

"Music educators make multiple photocopies of vocal parts." "'unauthorized use, serious'" (P19)

"We are <u>totally</u> against photocopying! (P22)

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"Opus has only been in production for Approximately 6 months, therefore we have not developed to a point where we would have a factual opinion of most questions asked. Questions answered where based on personnel opion at this time - Opus would like to see the results of this study if possible!" (P49)

"Music Educators have a moral and legal obligation not to copy parts. Illegal copying deprives the composer of his due royalty and the publisher of his rightful profit. Further, mechanical copies are more expensive than most printed copies - thereby placing an additional cost to the taxpayer." (P34)

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APPENDIX C

SUMMARY OF SELECTED COMMENTS RELATING TO THE OPINIONAIRE "SURVEY OF MUSIC EDUCATORS," CLASSIFIED BY ITEM

Item 1. "Of the three types of educational music, in which type does your school (department) have the most volume? A. March size, B. Concert band size, C. Choral, or D. Orchestra

"ABOUT THE SAME" (B10)

"about equal" (B16)

"Probably march size would equal concert. (one marching band & 2 concert organizations) With choral a close second." (B21)

"A. Actual number of compositions." (B24)

"A. & B. equal" (B25)

"A. - 40%, B. - 60%" (B35)

"about equal" (C18)

"THE BAND AND CHORAL MUSIC ARE JUST ABOUT THE SAME IN QUANTITY" (C20)

"have no real connection with the band department" (C25)

"A., B., C. Equal" (C30)

"Library pretty full in all depts." (C43)

"No Orchestra Choral Second and Concert Band Third" (C50)

"A, B, C, about equal" (C38)

"I am choir director not too familiar with Band Library Band has had bigger budget" (C28)

"B., C., D.,equal" (C33)

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Item 2. "Does your band (orchestra) use standard instrumentations such as 'full band,' 'Symphonic band,' etc."

Item 3. "Do you purchase your standard instrumentations from music publishers within the industry?"

"USUALLY THROUGH A MUSIC STORE" (B10)

"From Music Company" (C37)

Item 5. "If you checked 'A' in No. 4 above, do you secure permission from the publisher before making photocopies of the extra parts you need?"

"This process you refer to in your question takes longer than the time it takes to buy new." (B24)

"I ORDER THE LARGEST ARRANGEMENT. TIME DOES NOT PERMIT TO 'SEEK' PERMISSION' AVAILABLE (B35)

"Sometimes" (C12)

"If you purchase from company, you don't need to copy!" (C42)

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Item 4. "Which of the following means do you use as a means for procuring extra copies of parts of arrangements published by music publishing houses? A. Purchase from company, B. Hand copy, C. Photocopy, D. Other (explain)"

"one part copies of extra parts -" (B1)

"It depends upon the situation -" (B5)

"A. & C. Both - depending upon time limitations -" (B8)

"C. Can't afford two sets of music!" (B9)

"A. CONDUCTOR'S SCORES WHEN READILY AVAILABLE, B. OCCASIONALLY, C. MOST FREQUENT" B10)

"C. This is after buying at least two march size copies or one Symphonic size concert copy." (B21)

"A., B., and C. Only if separate parts are unavailable or in case of emergency when time doesn't permit ordering new." (B24)

"C. If unable to obtain from publisher" (B26)

"B. - CONCERT, C. - MARCH" (B28)

"A. IF AVAILABLE" (B35)

"A. & C. Half & Half" (C12)

"D. BORROW FROM ANOTHER SCHOOL. PHOTOCOPYING IS A LAST RESORT - MUSIC IS NOT AVAILABLE BUT IS NEEDED IMMEDIATELY." (C16)

"A. unless it's just 1 or 2 copies - in which case we photocopy" (C26)

"B. & C. I won't write publisher for 3 single parts needed - I will run off, have immediately, cheaper. I can't help if I have more saxaphones, flutes, t-bones than regular shipment of music allows." (C37)

"Buy 2 arrangements" (39)

"Photocopy used as long as only one or two parts are needed. Otherwise we purchase it from the company" (C50)

"Photocopy some for football shows." (C28)

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Item 6. "If you checked 'A' in No. 4 above, do you secure permission from the publisher before making photocopies of the extra parts you need?"

"(not on one Part or so)" (B1)

"USUALLY THROUGH A MUSIC STORE" (B10)

"Sometimes Many times I need the parts quickly. Many times parts are not available" (B15)

"Yes IF AVAILABLE" (B35)

"NEVER ORDER EXTRA PARTS" (B49)

"Sometimes" (C12)

"from local music store sometimes." (C46)

"MUSIC STORE" (C50)

"Do not need choral parts extra" (C38)

Item 7. "Do you believe music publishing houses derive substantial profits from the sale of extra parts to schools?"

"It would seem to be a nuseinse." (B8)

"They need to add extra cornet, flute and clarinet parts without changing the prices!" (B9)

"No Idea" (B15)

"I don't believe most schools buy extra parts. We often buy two sets of march size." (B25)

"I BELIEVE THAT THE COST OF MUSIC IS GOING OUT OF SIGHT! ONE NEEDS A 25% INCREASE IN MUSIC BUDGET JUST TO KEEP UP." (B35)

"Very, Yes" (C42)

"Whats the point? Its against the law to duplicate parts - unless publisher grants permission. -" (C43)

"Don't know" (C50)

"Have no information" (C38)

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Item 8. "Are you aware of any music publishers bringing legal action against any music educator or school for copying single parts of an arrangement?"

"rumors only" (C28)

Item 9. "Music educators make single photocopies of individual, concert-size, band or orchestra parts."

"Depends on a number of factors which might be involved" (B31)

"Publishers uncooperative about sending single parts." (B26)

Item 10. "Music educators make single hand copies of individual, concert-size, band or orchestra parts."

"transposition" (C30)

Item 13. "Music educators make single photocopies of vocal parts."

"It's as cheap to buy choral music as to photocopy it" (C50)

"always have enough copies" (C39)

"no" (C30)

"One 'in a pinch' is fair esp. considering how long it takes to get music from publisher." (C12)

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Item 14. "Music educators make single hand copies of vocal parts."

"no" (C30)

"rarely" (C28)

Item 15. "Music educators make multiple photocopies of vocal parts"

"no" (C30)

"Serious unless music is ordered - purchased as soon as convenient" (B42)

"Arrangements purchased from publishers seldom have enough parts for various bands ie. not enough 1st. el pts, etc. 1 Copy is not serious, however complete sets of parts should never be made. These should always be bought then additions made." (B14)

Item 16. "Music educators make multiple photocopies of band or orchestra parts."

"No need to do that" (C39)

"multiple - enough to cover any unusual instrument distributions in band after buying 'complete' set." (C12)

"Serious unless music is ordered - purchased as soon as convenient" (B42)

"Due to the (sometimes very long) Delay in sending back reorders It is sometime necessary to copy parts." (B5)

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Remarks

"Very confusing area of ethics - Good luck -" (B8)

"If music educator purchases a full band arrangement, he should be allowed to make a few copies to fill out requirements of an over size section (ie. 8 flutes in band - only 3 flute parts in arrangement). If music educator purchases a single copy (ie. trpt. march book) he should not make multiple copies to give to rest of band."
"Choral music would seem to apply to the latter case. Full choir arrangements are normally included in each single copy." (B10)

"The percent of the price increase in Band arrangements has had a bearing on my thinking on this subject..... plus the long delay on mail ordering." (B13)

"Many publishers have reduced this problem by charging more & including more fl, sax etc parts. This is not the problem it once was." (B15)

"I feel that it is really better to photocopy single pts. or a few copies of parts rather than bother the publisher. I feel that copying <u>entire sets</u> is grossly unfair, however. (B16)

"There are emergency situations. There is also a lot of red tape involving time with school purchase orders - which could delay performances or even cancel them.
Many publishers are not up to date in providing proper band instrumentation for modern bands. Therefore, we get too many unneeded parts and not enough needed parts. - School music budgets limit amounts purchased." (B32)

"getting extra parts from a publisher is almost impossible - They want to sell the whole arrangement or nothing. (B40)

"The copying of parts is legal to me because when a director is short one part on Fri & needs it for Sat. a company can't help him" (B49)

"When music has been ordered in plenty of time for contests, festivals, concerts, etc. and publisher back-orders additional copies which are late arriving, I think the music educator has only one course of action - <u>copy it</u>. I do feel when time is at a premium, the teacher must be able to put the music before his students in the classroom." (C16)

BEST COPY AVAILABLE

"Any multiple copy unauthorized whether by hand or machine is serious." (C26)

"I won't write publisher for 3 single parts needed - I will run off, have immediately, cheaper. I can't help if I have more saxaphones, flutes, T-bones than regular shipment of music allows." (C37)

"Order enough copies to start with!!! This is wasted effort!" (C42)

"This is a touchy topic. The copyright law is clearly stated. However, nobody wants to fool with small orders. School doesn't want to write up purchase order for a 40¢ copy of music. Music store doesn't want to waste time on ordering it. Usually you need copy right now - not 2 weeks from now." (C48)

"Since it is clear that the laws involving the copying of music are not enforced, I believe that publishers would be better off to charge more for their music and thus sell the rights to copy that music to all who buy it." (C50)

"1 2 3 4 5 Which is High to you? '5' for me More Data Needed -." (C33)

"Sorry, I am unable to help you at this time" (C6)

Shawnee Press inc.
DELAWARE WATER GAP, PA. 18327 / TEL. (717) 476-0550

Appendix D

April 19, 1974

Dear Dr. DuVall:

In responding to your questionnaire I hope we have answered in a manner that is helpful and meaningful.

In 25 years of publishing I believe I have heard just about every conceivable reason as to why it is "necessary" to photocopy copyrighted music. In the vast majority of cases the basic problem is poor planning and/or the triumph of expediency over principle.

Composers worth their salt expect to be paid for their work. It is the function of the publisher to assist them in receiving proper compensation for the use of their creative efforts. If the economic incentive is removed, creativity will dry up.

I sincerely believe that music educators who are, presumably, concerned with cultivating appreciation for an art form and the development of aesthetic principles should be the last ones to participate in--let alone encourage young people to be a party to--a rip off.

I trust you will understand that these remarks are not intended personally. For a number of years, both independently and in cooperation with the Music Publishers' Association, we have strongly put forward the proposition that the question of "to copy or not to copy" was essentially a moral one (rather than "practical" or "economic") of "to steal or not to steal."

I'm enclosing a copy of a brochure which we have been circulating (and you are free to reproduce with attribution) which you may find of interest.

We'll look forward to receiving a copy of your summary.

Sincerely,

Ernest R. Farmer

ERF:mv
Encs.

Ernest R. Farmer
President

Dr. Charles R. DuVall
Indiana University at South Bend
1825 Northside Boulevard
South Bend, Indiana 46615

Appendix D

MINI-COURSE IN COPYRIGHT

What is copyright?

Copyright is the exclusive legal right to make copies of intellectual property: books, music, poetry, pictures, drawings, etc.

Who owns this exclusive legal right to make copies?

The original creator(s); or assigned agents such as publishers.

Why can't I copy anything I want?

It's against the law to make unauthorized copies of copyrighted materials. It's something like dollar bills and postage stamps. You are not permitted to make your own.

Who made this Copyright Law?

When the Founding Fathers wrote the U. S. Constitution, they empowered Congress to grant copyrights and patents to authors and inventors, for limited times, and Congress passed the necessary legislation.

What was the idea?

The Founding Fathers believed that a nation should stimulate and encourage its most creative people in order to promote the general welfare of *all* the people. The idea was to make the work of creative minds and hands directly profitable to the creators, by granting them an exclusive property right for limited times.

2

Do other countries have copyright laws?

Today, yes, including socialist and communist countries. All the world now seems to recognize the need to give incentive to creative thinkers.

What's this business about "limited times"?

Copyrights and patents "run out" after a period of time. After the term expires, the intellectual property goes into the Public Domain, and becomes the property of *all* the people: anyone can then legally make copies. See what the Founding Fathers had in mind? It builds like a pyramid!

How can I tell if a piece of music is copyrighted?

By law, to be protected, a published piece of copyrighted music must carry a notice near the beginning that includes: 1) the word "Copyright," or the symbol ©; 2) the year the copyright was registered with the Library of Congress; 3) the name of the proprietor of the copyright.

How long does the copyright term run?

It varies, especially now (1973) because a new copyright bill is under consideration in Congress. To be on the safe side, do not copy any piece of music that carries a copyright year of 1906 or thereafter without checking with the publisher first. Any piece of music with a copyright date of 1905 or earlier is now in the Public Domain, and it belongs to *you*.

Is arranging considered to be copying?

Yes. You must ask for and receive permission from the copyright owner before you are allowed to arrange a copyrighted piece of music.

What about the words only of a copyrighted song?

If they are original lyrics, they are protected by the copyright, and they may not be copied without permission. This includes "song sheets." Texts from the Bible, Shakespeare, or dated pre-1906 are, of course, in the Public Domain and OK.

Are there any "teeth" in the Copyright Law?

Yes. Under the present Copyright Law, people found guilty of violating the law are subject to fines and jail sentences. The law has been tested, and fines and jail sentences have been imposed by the courts.

Does the Copyright Law apply in non-profit situations?

Yes. Schools and churches do not live outside the law.

What if I'm faced with a special situation?

If you want to include copyrighted lyrics in a song sheet . . . or arrange a copyrighted popular song for four baritones and kazoo . . . or make any special use of copyrighted music which the publisher cannot supply in regular published form, the magic word is: ASK. You may or may not receive permission, but when you use someone else's property—intellectual or otherwise—you must have the property owner's permission.

What if there's not time to ask?

Again, think of copyrighted music as a piece of property, and you'll be on the right track. Plan ahead.

4

What about photocopies that might now be in our performance or reference library?

If the music is in its active copyright term, destroy any unauthorized photocopies immediately, and replace them with authorized legal editions. In effect, any illegal copies would put you in the position of having stolen goods.

What about the photocopiers who don't "get caught"?

They are forcing the price of legal editions up. They are enriching the manufacturers of copying machines at the expense of composers, authors and publishers. They are risking embarrassment, at the least, from professional colleagues who understand the law; and they are risking fines and jail if they are taken to court.

Frankly, we cannot imagine what kind of school, church or professional musician would derive satisfaction from being a successful thief.

What about people who don't know about copyright?

Write to us for additional copies of this **Mini-Course in Copyright**, at no charge, and help spread the word.

Shawnee Press Inc.

Delaware Water Gap, Pa. 18327

(This message is being enclosed with all of our current shipments as part of the Music Publishers' Association's continuing program of consumer education in the field of copyright observance. MPA is a voluntary trade association of music publishers whose members publish most of the music played and sung in American churches, schools and concert halls.)

BEST COPY AVAILABLE

position from a musical play, with costumes and/or dialogue on the stage at your school, church or elsewhere, whether for profit or non-profit, you must secure from the owner of the work or his agent a license or permission. Such uses are not licensed by the performing rights societies referred to in "C." above.

E. When you see the word "Copyright" or the distinctive © printed on a piece of music, it is the notice that protects the copyright owner of the work and authorizes him to exclusively exercise and enforce all rights secured to him under the United States Copyright Law, and at the same time it is the notice that informs *you* that the exercising by you of any such acts, including those described in "B," "C," and "D," above, *unless authorized*, will subject you to liability under such law.

A printed copy of a musical composition published in the United States, bearing no copyright notice, or one with a copyright notice dated more than 68 years ago, indicates that the composition is in the public domain in the United States and may be used freely. However, if an arrangement, adaptation or other version of such a work has been copyrighted, utmost caution must be exercised in treating the same as you would any other copyrighted work. But notwithstanding such copyrighted arrangement, adaptation or other version, of a work in the public domain, you are still free to treat the basic composition as being in the public domain. A work in the public domain reprinted in a compilation is not protected, even though the compilation itself is copyrighted, unless the reprint is a copyrightable or copyrighted arrangement, adaptation or other version thereof.

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800 Fifth Avenue
Fourth Floor
New York, New York 10017

MUSIC COPYRIGHT LAW GUIDE

What You Can Do And What You Can't Do Under The United States Copyright Law

The source of the United States Copyright Law is the Constitution, Article 1, Section 8, which provides, "The Congress shall have Power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Thus empowered Congress enacted the Copyright Law to effectuate the intent of the Founding Fathers. It is this law which governs, and which must be our guide in our treatment and use of the works of authors who properly seek the protection afforded by copyright.

This is so, whether the work created by the author be music or literature or indeed, any other form of art which enjoys the protection of the copyright law.

By providing protection to authors and composers it was the intention of the Congress and indeed the Founding Fathers to benefit the public by promoting creation of a larger, better body of literary and artistic works for its use, instruction and pleasure.

In the music field, perhaps as in no other, because of the inherent nature of music and the multiplicity of ways of utilizing it, there has been practiced by the users thereof a great number of abuses in derrogation of the authors rights and in violation of the law. It is in the belief that many of these abuses are founded in misunderstanding rather than in malice, that we have made available this booklet which it is hoped will clarify the uses which can and cannot be made of copyrighted music.

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MUSIC COPYRIGHT LAW GUIDE

A. Even though music is protected by copyright under the United States Copyright Law there are various things which you can do without securing permission of any type and without fear of infringing.

You may purchase a copyrighted musical composition, orchestration or other form of published music and do the following with it:

1. You may sell it or give it away.
2. You may perform it in private, or in public for non-profit.
3. You may use it for teaching in a classroom, at home or in a pupil's home. Solely for teaching purposes you may write symbols and indicate instructions upon it.
4. Provided the composition has already been recorded by others, under the authorization of the copyright owner, for the manufacture of phonograph records serving to reproduce the same mechanically, and provided further that you notify the copyright owner by registered mail of your intention to make such use (with a duplicate of such notice to the Copyright office, Washington, D. C. 20540), you may make similar use thereof upon making monthly payments of the statutory royalty, to the copyright owner.

B. If you wish to make some other type of use which is not described above, you should write to the copyright owner for specific permission in each instance. The following are some of the things you cannot do without specific permission:

1. Reprinting, duplicating or copying the work or any part of it by any method or means whatsoever.
2. Arranging, adapting, orchestrating, translating or making any new versions of the work or any part of it.
3. Photographing or reproducing the work or any part of it by any method or means, including on film or slides or by opaque projector.
4. Performing the work in public for profit.
5. Recording the work by any method or means or for any use or purpose, other than as provided in "A. 4" above, including in synchronization with motion pictures or for television, and whether on records, film or tape.
6. Writing of parodies upon lyrics.

To avoid infringement, the right to do each or any of these acts must be cleared, and the clearance of one particular right does not clear any of the other rights. All rights are separate, distinct and independent. For instance, the clearance for broadcast does not carry with it the right to copy, or to arrange, or to record; clearance of the right to record does not carry with it the right to perform. The obligation is upon you to make certain that the right involved in the act you intend to do, has been cleared.

C. If you have occasion to perform a musical composition publicly for profit, in a manner other than as set forth in "D" below guide yourself as follows:

If the performance is to be in a theatre or over a radio or television station, in all likelihood the theatre, radio or television station will have a license for you to perform the musical composition publicly for profit. However, it is your obligation to make certain of this and to secure a license if there is none.

If the performance is to take place elsewhere, there is less likelihood that the establishment has a license for you to perform publicly for profit and in such event a license must be secured. There are three important performing rights societies which license the great majority of copyrighted musical compositions: American Society of Composers, Authors and Publishers (usually referred to as "ASCAP"), 575 Madison Avenue, New York, New York 10022; Broadcast Music, Inc. (usually referred to as "BMI"), 589 Fifth Avenue, New York, New York 10017, and SESAC, INC., 10 Columbus Circle, New York, New York 10019.

D. If you have occasion to present a musical play or other dramatic work or a musical com-

Appendix D

BOOSEY AND HAWKES INC.
30 WEST 57th STREET
NEW YORK, NEW YORK 10019
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CABLE: SONOROUS, NEW YORK

May 14, 1974

Mr. Jerry C. Mitchell
c/o Mr. C. R. DuVall
Indiana University
1825 Northside Boulevard
South Bend, Indiana 46615

Dear Mr. Mitchell:

I must apologize for the delay in responding to your letter of April 15. The pressure of more urgent matters caused your questionnaire to be put to one side for longer than was really polite. Having said that, I must go on to say that I find it most difficult to imagine what prompted you to make this survey. It surely cannot be the case that you are entirely ignorant of the laws of copyright. Expressing it as briefly as possible, the sole right to make copies of a copyright work lies with the copyright owner.

One is aware that it is not always easy to obtain extra parts that may be necessary either to augment the set purchased or to replace those that have been lost. Buying and selling extra parts is a time-consuming nuisance, but there is no alternative if one wishes to be law-abiding. Publishers make a fetish of supplying extra parts on demand in order to encourage others to stay within the law. We lose money in so doing but that simply cannot be helped.

Illegal duplication of copyright works is not confined to extra parts by any means. Were we to condone illegal copying we would effectively ensure the bankruptcy of the publishing industry. I am enclosing two pamphlets on the subject of copyright: one is a publication of the Music Publishers' Association; the other is a very helpful guide prepared and issued by our fellow publishers, Shawnee Press Inc. If you would like further information on the subject, please feel free to respond to my letter.

Sincerely,

W. Stuart Pope
Managing Director

WSP:jg
enc.

GALAXY MUSIC CORPORATION
2121 BROADWAY, NEW YORK, N.Y. 10023 (212) 874-2100

Appendix D
20 May 1974

Mr. Jerry C. Mitchell
Indiana University
1825 Northside Boulevard
South Bend, Indiana 46615

Dear Mr. Mitchell:

I hope you will forgive my not answering items 7-10 on your survey. I am phobic about making multiple choice answers to complex questions, a practice which has become endemic in educational circles.

Question 7 is simply unfair. It is like asking: Do you know of anyone who has been arrested and convicted for stealing a cello? Well, I have read of persons convicted of stealing color TV's, electric typewriters, HI FI's and even violins, but not necessarily a cello.

Your question, in fact all the questions, have a slant to them. They seem to infer that the xeroxing of parts is all right - it's all the other xeroxing that's bad and illegal. But every group feels that its photocopying is justified. The choir director thinks an octavo costs too much (besides, isn't the choir singing in God's name?); the piano teacher can't stand waiting three months to get a copy of music imported from France; the theory teacher is switching lectures and would like to run off twenty instant copies of Stravinsky's Owl and the Pussycat. Add and multiply it all up and you have very substantial sums of money being shunted illegally from composers and their publishers. This loss of income is not imagined; it is very keenly felt by composers and publishers everywhere, just as the storekeeper feels the pinch of shoplifting.

Admittedly, the parts problem is complicated by two factors: publishers do tend to charge proportionately more for single parts so as to encourage buying in sets; also, some publishers tend to run out of stock frequently.

This publishing house has a standard policy regarding parts: if we can't supply them immediately, and the customer so requests, we give one time permission to photocopy as a standby until the music does arrive. Any circumvention of this route is simply dishonest. If the mores of our time are such that, as sins go, photocopying parts is indeed a very lesser one, that does not diminish a basically illegal act and one that badly hurts creators and their commercial benefactors, the publishers.

I am glad to answer your survey, with only the aside that I hope (as sometimes happens with surveys) a basically illegal act is not now given an edge of respectability because of its being "sanitized" through the wash of an academic research.

Yours sincerely,

Donald Waxman

Donald Waxman
Supervising Editor

DW:m

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Appendix D

April 22, 1974

Prof. Charles R. DuVall and
Mr. Jerry C. Mitchell
Division of Education
Indiana University at South Bend
1825 Northside Boulevard
South Bend, Indiana 46615

Dear Prof. DuVall and Mr. Mitchell:

Enclosed is my reply written hastily to your questionnaire.

Obviously giving the permission for any kind of copying to one user would automatically entitle other users to the same. Therefore, we cannot give permission for photocopying or any other kind of copying.

At the present time, we have determined that we may very well discontinue the publication of choral music because of the problem of photocopying. It is no longer profitable. In the end it is going to be the users of choral music as well as the choral composer and choral publisher that will find a diminishing market and probably diminishing interest in the medium.

I sincerely hope this does not happen to the most exciting compositional field in American music today, the band.

With every good wish to you.

Yours truly,

NEIL A. KJOS MUSIC COMPANY

Neil A. Kjos, Jr.

Neil A. Kjos, Jr.
President

NAK/m

Enc.

BEST COPY AVAILABLE

Any photocopying or hand copying is a violation of the copyright law as it stands now, and for good reason: It involves theft of the work of someone else without compensation. Although publishers do not profit from selling extra parts (most will tell you that they lose on the deal because it involves "breaking complete sets") they should pay royalties to the writer for any sale of his material; some publishers do not, but in our case we do. You know all of the arguments and debate about "fair use" and the problem of copying extra parts or you wouldn't be sending out your questionnaire.

Publishers helped to create the problem by "customizing" the sale of band sets at the outset of band publishing by selling a minimal instrumentation and offering extra parts. They were in the business of selling individual parts as much as complete sets. We are stuck with this tradition, while the mechanics of publishing has changed drastically. Our printing processes (and many but not all others) are much more efficient and no longer involve the printing of each separate part; parts are printed in 8 and 16-page signatures, collated by machine, etc. The problem of selling extra parts now involves breaking complete sets, plus the additional problem of inventorying leftovers and labor to handle it. However, we do it, while others look the other way as regards copying. Our particular problem involves computor billing and inventory, so that there is no way we can handle the sale of extra parts directly from the publisher - we work it through any one of our retail affiliates who do not have the computor problem. Non-affiliates won't bother, telling the customer that this publisher does not sell extra parts - they make little on it and don't want to be bothered. It's our problem, but it makes us the bad guys in the eyes of the customer.

On the other hand, band directors who, for one reason or another, have no control over their instrumentation, and who want to do the right thing by ordering extra parts, can't understand why some publishers don't want to bother selling them extra flute parts because he has 16 flutes in a given year. Most publishers try to give a sufficient number of parts in what they call "Complete Band" sets. But even this does not solve the above (typical) problem.

The most serious offenders are the choral directors who copy. A choral part is complete in itself and easy to copy, although it is probably more expensive (to someone) to copy.

Just some random thoughts on the problem, and I hope it has been helpful. The point is that I don't think the problem lies completely with the publisher - teachers, dealers and jobbers all share fault to a degree.

Thanks,

John Edmondson
Educational Editor
Hansen Publications, Inc.

Jerry - We
have permission
to publish all but
these - Ed mentioned you get
from Ed mentioned?
I think it got from
Malin - and we followed
up w/ him.

Phil

CABLES: BELMIL – MELVILLE – NY

Belwin Mills Publishing Corp.
MELVILLE, N. Y. 11746 / (516) 293-3400
MARTIN WINKLER, President

Appendix D

May 17, 1974

Mr. Charles R. Duvall
Mr. Jerry C. Mitchell
Indiana University at South Bend
1825 Northside Boulevard
South Bend, Indiana 46615

Gentlemen:

We are returning your questionnaire and adding a few observations.

We feel that permission should be requested for reproducing parts or scores of musical publications. When the publisher can not supply such parts or when they are not delivered through poor mail service or for other reasons, we are quite sure that publishers will grant permission for such reproduction. It does not seem wise for publishers to grant blanket permission for reproduction of parts for band or orchestra instruments or copies of choral music.

The sale of extra band and orchestra parts is regarded by publishers as of some importance and you may have noted that most publishers now offer only a Complete Orchestra (usually the old Set B) with a Supplementary String Unit, if needed. This came about because dealers were reporting that too many customers were purchasing the Set A (with single string parts) and augmenting to Set B or C with photocopied parts.

Publishers have also largely discontinued the Full Band in favor of the Complete or Symphonic Band which provides a larger number of parts.

As to legal action (Question 7) we think you will find that publishers generally have been using persuasion rather than threats to elicit copyright observance.

Publishers recognize that Music Educators are our best customers and we wish to cooperate with them and be of service to them. We also wish to continue the production of new music. To attain these

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Appendix D

May 17, 1974

Mr. Charles R. Duvall
Mr. Jerry C. Mitchell
Indiana University at South Bend
South Bend, Indiana 46615

objectives, it is necessary that the publisher retain control of the use of his copyrights and the reproduction of scores and/or parts is one of these uses.

We feel that Music Educators generally recognize that decisions concerning reproduction of music should rest with the publisher and that when emergencies involving the need for reproducing parts arise, such emergencies will be treated by the publisher with consideration and fairness.

Cordially,

BELWIN-MILLS PUBLISHING CORP.

DON MALIN

DM:cl
Encs.